

## Rider to Software License Terms

This rider ("Rider") to the Software License Agreement between Splunk Inc., a Delaware Corporation ("Licensor") and the State of Oregon, acting through its Department of Administrative Services, Procurement Services ("DAS"), on behalf of state of Oregon agencies and members of the Oregon Cooperative Procurement Program (such agencies and members are both hereinafter referred to as "Licensee") amends and supersedes any provision to the contrary in the Software License Agreement ("License"), a copy of which is attached to this Rider as Attachment A. This Rider and the License constitute the entire licensing agreement (collectively "Agreement") between Licensor and Licensee, and merge all prior and contemporaneous communications with respect to the matters described in this Agreement. Any capitalized terms not defined in this Rider shall have meanings ascribed to them in the License.

Notwithstanding any language in the License to the contrary, Licensor and DAS agree:

1. **Software.** This Rider pertains to Splunk Materials and related intellectual property licensed by Licensor to Licensee under this Agreement, as well as Support, either of which may be paid for through Licensor's authorized reseller.
2. **Statewide Price Agreement.** The Software and Support is available through a price agreement with an Authorized Partner. Such price agreement is held by DAS under applicable Oregon law. Licensee may order Software and Support via a purchase order issued to the Authorized Partner. DAS is not a party to the purchase or the individual License issued to a Licensee under this Agreement.
3. **Effective Date and Term.** This Agreement is effective when it is fully executed and approved according to applicable laws, rules and regulations, whichever date is later ("Effective Date"). This Agreement continues in effect unless terminated by either party by providing notice in the manner specified in Section 16 of the License and as specified in Section 13 of this Rider. Additionally, Support may be terminated by providing notice in the manner specified in Section 3.2 of Exhibit C (Splunk Inc. Support and Maintenance Terms and Conditions, the "Terms") of the License.
4. **Confidential Information.**
  - 4.1. Licensor acknowledges that any obligation of Licensee to maintain the confidentiality of Licensor's proprietary and confidential information provided to Licensee, which includes but is not limited to the confidential information specified in Section 14 and its subsections of the License, is conditioned by and subject to Licensee's obligations under the Oregon Public Records Law, Oregon Revised Statutes ("ORS") 192.410 to 192.505 which may require disclosure of proprietary information as a "public record" (as defined in ORS 192.410(4)(a)) unless exempt under ORS 192.501 or ORS 192.502.
  - 4.2. Licensor acknowledges that, it and its employees, subcontractors or agents in the course of this Agreement may be exposed to or acquire information that is confidential to Licensee or Licensee's clients. Any information Licensor or its employees or agents receive or acquire relating to Licensee or Licensee's clients in the performance of this Agreement is deemed to be confidential information of Licensee ("Confidential Information"), with the exception of:
    - 4.2.1. Information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by Licensor;
    - 4.2.2. Information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality;
    - 4.2.3. Information that was known to Licensor prior to the Effective Date of the Agreement without obligation of confidentiality;
    - 4.2.4. Information that is independently developed by Licensor and documented in writing without use of, or reference to, any confidential information of Licensee; and
    - 4.2.5. Information required to be disclosed by compulsory judicial or administrative process or by law or regulation.
    - 4.2.6. If Licensor is required to disclose Confidential Information under clause 4.2.5, Licensor shall first give Licensee notice and shall provide such information as may reasonably be necessary to enable Licensee to take action to protect its interests.
  - 4.3. Licensor shall comply with the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 646A.628, to the extent applicable to this Agreement.
5. **Indemnification.**
  - 5.1. **Limits on Licensee Indemnification.** To the extent Licensee is required under the License to indemnify or hold Licensor harmless against claims brought by third parties against Licensor, Licensee's obligation to indemnify is subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.
  - 5.2. **Licensor Indemnification.** Licensor shall indemnify and hold Licensee, the State of Oregon, DAS, and their agents, officials and employees harmless from all third party claims, demands, suits, actions, proceedings, losses, liabilities, damages, awards, and costs (including reasonable attorneys' fees and expenses ), brought or made against Licensee, the State of

Oregon, DAS, or their agents, officials or employees and arising out of or related to any of the following (each, an "indemnifiable loss"):

- 5.2.1. Personal injury, death or tangible property damage caused by any alleged act, omission, error, fault, mistake or negligence of Licensor, its employees, agents, or representatives in connection with Licensor's performance under the Agreement; and
- 5.2.2. Any willful or grossly negligent act or omission by Licensor that constitutes a material breach of the Agreement.
- 5.2.3. Licensee will timely notify Licensor in writing of any action, claim or demand of which Licensee becomes aware and which Licensee reasonably expects to result in an indemnifiable loss. Licensor's obligation under this section does not extend to any indemnifiable loss to the extent caused by: (i) the negligence or willful misconduct of Licensee, the State of Oregon, or their agents, officials or employees; (ii) modification of the Purchased Software by anyone other than Licensor where the unmodified version of the Purchased Software would not cause an indemnifiable loss; (iii) use of the Purchased Software in a manner that is not permitted under the Agreement or that is inconsistent with Licensor's applicable user documentation; (iv) the combination of Software with hardware or software not made by Licensor, or with third-party services, processes or materials where the indemnifiable loss would not occur but for such combination; (v) Licensee's continued use of the Purchased Software or other allegedly infringing activity after receiving notice of the alleged infringement; or (vi) any version of the Purchased Software that is no longer supported by Licensee.

6. **Indemnity; Defense of Claims.** To the extent Licensor is required under this Agreement to defend the State of Oregon, DAS, or Licensee against claims asserted by third parties, Licensee shall reasonably cooperate in good faith, at Licensor's reasonable expense, in the defense of the claim and Licensor shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim, and Licensor shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, DAS, Licensee, its officers, employees or agents. Licensee may elect to assume its own defense with an attorney of its own choice and its own expense at any time Licensee determines important governmental interests are at stake. Licensee will promptly provide notice to Licensor of any claim that may result in an obligation on the part of Licensor to defend. Subject to these limitations, Licensor may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of DAS or Licensee, which consent must not be unreasonably withheld.
7. **Governing Law; Jurisdiction; Venue.** This Agreement is to be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. LICENSOR HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THIS COURT, WAIVES ANY OBJECTION TO VENUE IN THESE COURT, AND WAIVES ANY CLAIM THAT THIS COURT IS AN INCONVENIENT FORUM. In no way may this section or any other term of this Agreement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.
8. **Attorney Fees.** Either party to this Agreement is entitled to obtain judgment from the other party for attorney fees incurred in any litigation between the parties or in defense of any claim asserted by a third party up to the maximum amount permitted by Article XI, Section 7 of the Oregon Constitution.
9. **Software Verification and Audit; Access and Audit rights.** Licensor's audit rights in Section 9 of the License are subject to the following:
  - 9.1. Any audit will take place upon not fewer than thirty (30) days' written notice, during normal business hours and in a manner that does not interfere unreasonably with Licensee's operations. Licensee will provide Licensor or the independent auditor with information reasonably requested in furtherance of the verification. As an alternative, Licensor can request Licensee complete a self-audit questionnaire.
  - 9.2. If the agreed-upon final audit report reveals that Licensee does not have sufficient Licensed Capacity to meet its actual use, Licensee will order sufficient Licensed Capacity at then-current prices available to State of Oregon agencies under an Oregon software reseller price agreement. Licensee will not pay a penalty. Licensee shall purchase Support.
  - 9.3. Each party will bear its own costs of any activity conducted pursuant to Section 9 of the License.
10. **Dispute Resolution.** Any dispute between the parties under the License that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes.
11. **License and Subscription Fees; Payment.** Licensee's obligation to pay late charges is subject to ORS 293.462.
12. **Incorporation of Oregon Statutes.** ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.

- 13. Termination for Lack of Funding.** Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Licensee's payment for License Fees and/or Support Fees due after the last calendar day of the current State of Oregon biennium is contingent upon Licensee receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Licensee, in the exercise of its reasonable administrative discretion, to continue to compensate Licensor. Licensee may immediately terminate this Agreement upon written notice if Licensee fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by Licensee's budget or spending plan and Licensee determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Agreement.
- 14. Independent Contractor.** Licensor is at all times an independent contractor and not an agent, employee, or representative of the State of Oregon, DAS, or Licensee. Licensor has no right or authority to incur or create any obligation for or legally bind Licensee in any way. Licensor is not an "officer," "employee" or "agent" of Licensee or any other agency, office, or department of the State of Oregon, as those terms are used in ORS 30.265, and Licensor shall make no representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for in the Agreement or authorized in writing by the party to be bound.
- 15. Order of Precedence.** In the event of any conflict between the Rider, the License, and any terms and conditions published by Licensor on or after the Effective Date of this Agreement and any terms presented to an end user in a 'click wrap' or end user agreement, the conflict will be resolved in that order.
- 16. Publicity.** Licensor may disclose the form and existence of this Agreement in advertising, press releases or other materials distributed to prospective customers, but shall not otherwise attempt to obtain publicity from its association with Licensee or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Licensee or the State of Oregon of Licensor's Application Services, without the prior written consent of Licensee.
- 17. Counterparts.** This Rider may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together constitute one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 18. Tax Compliance.** By executing this Rider, the undersigned certifies under penalty of perjury that Licensor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state. Licensor shall, for the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that apply to Licensor, to Licensor's property, operations, receipts, or income, or to Licensor's performance of or compensation for any work performed by Licensor; (iii) any tax provisions imposed by a political subdivision of this state that apply to Licensor, or to goods, services, or property, whether tangible or intangible, provided by Licensor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- 18.1.** This Agreement will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Contract or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

SPLUNK INC.:

DocuSigned by:  
*Tim Emanuelson*  
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THE STATE OF OREGON, ACTING THROUGH ITS DEPARTMENT OF ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES ON BEHALF OF STATE OF OREGON AGENCIES AND MEMBERS OF THE OREGON COOPERATIVE PROCUREMENT PROGRAM:

By: Tim Emanuelson  
As: VP, Controller  
Date: 27-Nov-2017

By: *Benny Bebirth*  
As: *Procurement Services*  
Date: *11/27/17*

Attachments:

Attachment A –Software License Agreement

## ATTACHMENT A

### SOFTWARE LICENSE AGREEMENT

THIS SPLUNK SOFTWARE LICENSE AGREEMENT ("AGREEMENT") ENTERED INTO BY SPLUNK INC., WITH ITS PRINCIPAL PLACE OF BUSINESS AT 270 BRANNAN STREET, SAN FRANCISCO, CA 94107 ("SPLUNK") AND STATE OF OREGON, ACTING BY AND THROUGH THE DEPARTMENT OF ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES ("DAS") ON BEHALF OF STATE OF OREGON AGENCIES AND MEMBERS OF THE OREGON COOPERATIVE PROCUREMENT PROGRAM (INDIVIDUALLY "**CUSTOMER**") GOVERNS THE INSTALLATION AND USE OF THE SPLUNK SOFTWARE DESCRIBED HEREIN. THE INSTALLATION AND USE OF THE SPLUNK SOFTWARE WILL BE SUBJECT TO THE ORDER DOCUMENT(S).

THIS AGREEMENT SUPERSEDES ANY CLICK-THROUGH SOFTWARE LICENSE AGREEMENT REQUIRED IN ORDER TO ACCESS, INSTALL OR USE ANY SOFTWARE AND ANY AGREEMENT TO PERFORM PROFESSIONAL SERVICES WITH RESPECT TO THE SOFTWARE. THIS AGREEMENT IS ENFORCEABLE AGAINST ANY PERSON OR ENTITY THAT USES THE SOFTWARE, SUPPORT, AND/OR SERVICES, AND ANY PERSON OR ENTITY THAT USES THE SOFTWARE, SUPPORT, AND/OR SERVICES ON ANOTHER PERSON'S OR ENTITY'S BEHALF.

THIS SOFTWARE IS BEING LICENSED AND NOT SOLD TO CUSTOMER. SPLUNK PERMITS YOU TO DOWNLOAD, INSTALL AND USE THE FUNCTIONALITY OR FEATURES OF THE SOFTWARE ONLY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

1. **DEFINITIONS.** Capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in Exhibit A.

#### 2. LICENSE GRANTS

**2.1 Purchased Software.** Subject to Customer's compliance with this Agreement, including Customer's timely payment of all License Fees, Splunk grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license during the applicable Term to install and use the Purchased Software within the Licensed Capacity solely for Customer's Internal Business Purposes.

**2.2 Evaluation Software.** If the applicable Order specifies that any Software is provided under an evaluation license or a free trial license, then subject to Customer's compliance with this Agreement, Splunk grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license during the applicable Term to install and use the Evaluation Software within the Licensed Capacity solely for evaluating whether Customer wishes to purchase a commercial license for such Software. Notwithstanding anything to the contrary in this Agreement, Splunk does not provide maintenance and support (Section 7), warranty (Section 10), or indemnification (Section 13) with respect to Evaluation Software.

**2.3 Test and Development Software.** If the applicable Order specifies that any Software is provided under a test and development license, then subject to Customer's compliance with this Agreement, Splunk grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license during the applicable Term to install and use the Test and Development Software within the Licensed Capacity in a non-production system used for software product migration testing, software product pre-production staging, testing new data sources, types or use cases, or other non-production use. In no way should the Test and Development Software be used for any revenue generation, commercial activity or other productive business or purpose. Notwithstanding anything to the contrary in this Agreement, Splunk does not provide warranty (Section 10), or indemnification (Section 13) with respect to the Test and Development Software.

**2.4 Free Software.** Splunk may make certain Software available for license without charge, and such Free Software may have limited features, functions, or other limitations of any kind. Subject to Customer's compliance with this Agreement, Splunk grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license during the applicable Term to install and use the Free Software within the Licensed Capacity solely for Customer's Internal Business Purposes. Notwithstanding anything to the contrary in this Agreement, Splunk does not provide maintenance and support (Section 7), warranty (Section 10), or indemnification (Section 13) with respect to Free Software.

**2.5 Content Subscription.** When the applicable Order specifies a Content Subscription service as elected by Customer, Splunk will deliver or otherwise make available the applicable Content Subscription service to Customer during the subscription period, and subject to Customer's compliance with this Agreement (including Customer's timely payment of all applicable Content

Subscription Fees), Splunk grants to such Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license during the applicable subscription period to install and use the subscribed content solely in connection with the designated Purchased Software and solely for Customer's Internal Business Purposes. Such content will be treated as Purchased Software under this Agreement except that Section 10 (Warranty) will not apply.

**2.6 Splunk Extensions.** Subject to Customer's compliance with this Agreement, including Customer's timely payment of all License Fees (if any), Splunk grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license to use Splunk Extensions solely in connection with applicable Software that Customer has licensed from Splunk, subject to the same limitations and restrictions (including with respect to Term and Licensed Capacity) that apply to the Software with which the Splunk Extensions are used. Notwithstanding the foregoing, if any Splunk Extension is provided to Customer under a separate license agreement that grants Customer more permissive or broader rights with respect to such Splunk Extension (e.g., a separate license agreement that is provided to Customer as part of the download process for such Splunk Extension), then that separate license agreement, and not this Agreement, will govern Customer's installation and use of such Splunk Extension (but, for clarity, this Agreement will apply to all other Splunk Extensions).

**2.7 Customer Extensions.** Subject to Customer's compliance with this Agreement, Splunk grants to Customer a nonexclusive, worldwide, nontransferable, nonsublicensable license (a) to copy, modify and use the Splunk Developer Tools solely to develop Extensions for use with the designated Software or Splunk Extension ("**Customer Extensions**"), including to support interoperability between the Software or Splunk Extension and Customer's system or environment and (b) to distribute the Customer Extensions exclusively for the use with the designated Software or Splunk Extension. The foregoing license is subject to the following conditions: (x) Splunk proprietary legends or notices contained in the Splunk Developer Tools may not be removed or altered when used in or with the Customer Extension; and (y) Customer may not make any statement that Customer Extension is certified or that its performance is guaranteed by Splunk. Customer retains title to the Customer Extensions, subject to Splunk's ownership set forth in Section 5. If Customer allows end users of Customer Extensions to modify or distribute the Customer Extensions, Customer shall limit such modification or distribution to use with the designated Software or Splunk Extension only, and will flow down the conditions in (x) and (y) above to end users of Customer Extensions. Customer agrees to assume full responsibility for the performance and distribution of Customer Extensions.

**2.8 Open Source Software.** Customer acknowledges that certain Software may contain Open Source Software. Open Source Software may be identified in the end user documentation or in a list of the Open Source Software provided to Customer upon Customer's written request. Any Open Source Software that is delivered to Customer as part of Purchased Software, and which may not be taken out of the Purchased Software or used separately from the Purchased Software is covered by the warranty, support and indemnification provisions applicable to Purchased Software. Customer acknowledges that specific terms required by the respective licensor of the Open Source Software may apply to the use of Open Source Software, which terms shall be included in the documentation; however, these terms will not: (a) impose any additional restrictions on Customer's use of the Software, or (b) negate or amend Splunk's responsibilities with respect to Purchased Software.

- 3. LICENSE RESTRICTIONS.** Unless otherwise expressly permitted by Splunk, Customer will not and Customer has no right to: (a) copy any Splunk Materials (except as required to run the Software and for reasonable backup purposes); (b) modify, adapt, or create derivative works of any Splunk Materials; (c) rent, lease, loan, resell, transfer, sublicense, distribute, disclose or otherwise provide any Splunk Materials to any third party; (d) decompile, disassemble or reverse-engineer any Splunk Materials, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in any Splunk Materials, except to the extent expressly permitted by applicable law notwithstanding a contractual prohibition to the contrary; (e) access or use any Disabled Materials; (f) provide to any third party the results of any benchmark tests or other evaluation of any Splunk Materials without Splunk's prior written consent; (g) attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit or control use or copying of, or access to, any Splunk Materials (including in order to gain access to any Disabled Materials); (h) remove or obscure any copyright, trademark, patent, or other proprietary notices, legends or symbols from any Splunk Materials; (i) exceed the Licensed Capacity; (j) otherwise access or use any Splunk Materials except as expressly authorized in this Agreement; or (k) encourage or assist any third party to do any of the foregoing. Customer acknowledges that the Software may be configured to display warnings, reduce available functionality, and/or cease functioning if unauthorized or improper use is detected, including if the Term expires or the Licensed Capacity is reached or exceeded.
- 4. CONSULTANTS.** Customer may permit its authorized consultants, contractors, and agents ("**Service Providers**") to access and use the Software solely on Customer's behalf in connection with providing services to Customer, subject to the terms and conditions of this Agreement. Any such access or use by a Service Provider will be subject to the same limitations and restrictions that apply to Customer under this Agreement, and Customer will be jointly and severally liable for any Service Provider's actions relating to or use

of the Software. For avoidance of doubt, the aggregate use by Customer and all of its Service Providers must not exceed the Licensed Capacity and nothing in this Section 4 is intended to or will be deemed to increase any Licensed Capacity.

5. **OWNERSHIP.** Splunk, its suppliers and/or licensors own all worldwide right, title and interest in and to the Splunk Materials, including all related Intellectual Property Rights. Except for the licenses expressly granted to Customer in Section 2, Customer will not acquire or claim any right, title or interest in or to any Splunk Materials or related Intellectual Property Rights, whether by implication, operation of law or otherwise. Notwithstanding anything to the contrary, the Software is licensed, not sold, to Customer. To the extent that Customers provides any Feedback, Customer grants to Splunk a perpetual, irrevocable, worldwide, nonexclusive, transferable, sublicensable, royalty-free, fully paid-up right and license to use and commercially exploit the Feedback in any manner Splunk deems fit.
6. **LICENSE AND SUBSCRIPTION FEES.** Customer will pay all license fees set forth in the Order (the "**License Fees**") for the Software delivered to Customer no later than thirty (30) days after the date of Splunk's applicable invoice. Customer will also pay all content subscription fees as may be applicable to the Purchased Software, as identified in the Order (the "**Content Subscription Fees**", collectively together with License Fees, the "**Fees**"). Without limitation of Splunk's other termination rights, if Customer fails to pay the Fees when due, then Splunk may terminate this Agreement and all licenses granted hereunder by notice to Customer. All Fees are non-refundable once paid. Any fees and payment terms for Splunk Extensions not included in the Order will be as set forth on the download page for such Splunk Extensions.
7. **MAINTENANCE AND SUPPORT.** If Customer has purchased support and maintenance for the Purchased Software as set forth in the Order (the "**Support Services**"), then Splunk will provide the level of support and maintenance included in the Order in accordance with the terms and conditions set forth in Exhibit C.
8. **CONFIGURATION SERVICES.** Subject to Customer's payment of applicable fees, Splunk will provide the deployment, usage assistance, configuration, and/or training services (if any) set forth in the Order (the "**Professional Services**") in accordance with Splunk's standard professional services terms and conditions, which terms and conditions are hereby incorporated by reference and made a part of this Agreement.
9. **SOFTWARE VERIFICATION AND AUDIT.** At Splunk's request, Customer will furnish Splunk with a certification signed by Customer's authorized representative verifying that the Software is being used in accordance with this Agreement and the applicable Order. Also, if Customer has purchased an offering that requires usage reporting as identified in the Order, Customer agrees to provide such reporting pursuant to the requirements set forth by Splunk. Upon at least ten (10) days' prior written notice, Splunk may audit Customer's (and its Service Providers') use of the Software to ensure that Customer (and such Service Providers) are in compliance with this Agreement and the applicable Order. Any such audit will be conducted during regular business hours at Customer's (or its Service Providers) facilities, will not unreasonably interfere with Customer's (or its Service Providers' ) business and will comply with Customer's (or its Service Providers' ) reasonable security procedures. Customer will (and will ensure that its Service Providers) provide Splunk with reasonable access to all relevant records and facilities reasonably necessary to conduct the audit. If an audit reveals that Customer (or any Service Provider ) has exceeded the Licensed Capacity or the scope of Customer's license grant during the period audited, then Splunk will invoice Customer, and Customer will promptly pay Splunk any underpaid fees based on Splunk's price list in effect at the time the audit is completed. If the excess usage exceeds ten percent (10%) of the Licensed Capacity, then Customer will also pay Splunk's reasonable costs of conducting the audit. Customer will ensure that its Service Providers provide Splunk with the access described in this Section 8. This Section 8 will survive expiration or termination of this Agreement for a period of three (3) years.
10. **WARRANTY.** Splunk warrants that for a period of thirty (30) days from the Delivery of Purchased Software, the Purchased Software will substantially perform the material functions described in Splunk's user documentation for such Purchased Software, when used in accordance with the user documentation. The sole liability of Splunk (and its Affiliates and suppliers/licensors), and Customer's sole remedy, for any failure of the Purchased Software to conform to the foregoing warranty, is for Splunk to do one of the following (at Splunk's sole discretion): (a) modify, or provide an Enhancement for, the Purchased Software so that it conforms to the foregoing warranty, (b) replace Customer's copy of the Purchased Software with a copy that conforms to the foregoing warranty, or (c) terminate the license with respect to the non-conforming Purchased Software and refund the License Fees paid by Customer for such non-conforming Purchased Software. All warranty claims must be made by written notice to Splunk on or before the expiration of the warranty period.
11. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10 ABOVE, THE SPLUNK MATERIALS, OPEN SOURCE SOFTWARE, THIRD PARTY CONTENT, SUPPORT SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. TO THE FULL EXTENT PERMITTED BY LAW,

SPLUNK AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 10, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR TRADE USAGE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, SPLUNK DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

**12. LIMITATION OF LIABILITY.** TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (A) SPLUNK AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (THE "SPLUNK ENTITIES") WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ARISING FROM LOSS OF USE, LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF; AND (B) SPLUNK ENTITIES' TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO SPLUNK FOR THE PURCHASED SOFTWARE IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY, IN EACH OF THE FOREGOING CASES (A) AND (B), REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, INDEMNIFICATION, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER SPLUNK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN ADDITION, CUSTOMER, AND NOT SPLUNK, IS SOLELY RESPONSIBLE FOR THE ACCURACY, QUALITY AND SECURITY OF CUSTOMER'S DATA AND FOR MAINTAINING A BACKUP OF ALL SUCH DATA, AND FOR ENSURING THE SECURITY AND INTEGRITY OF CUSTOMER'S (AND ITS SERVICE PROVIDER'S) DATA, COMPUTERS, NETWORKS AND SYSTEMS (INCLUDING WITH RESPECT TO PROTECTING AGAINST VIRUSES AND MALWARE).

**13. INDEMNITY.** Splunk will defend Customer against any claim, demand, suit or proceeding ("**Claim**") brought against Customer by a third party alleging that Purchased Software infringes or misappropriates such third party's Intellectual Property Rights, and Splunk will pay all damages finally awarded against Customer by a court of competent jurisdiction as a result of such Claim, subject to the other terms and conditions of this Agreement. Notwithstanding the foregoing, Splunk has no obligation to indemnify Customer with respect to: (a) use of the Purchased Software in a manner that is not permitted under the Agreement or that is inconsistent with Splunk's applicable user documentation; (b) modifications to the Splunk Materials made by anyone other than Splunk; (c) the combination of Software with hardware or software not made by Splunk, or with third-party services, processes or materials where the infringement or misappropriation would not occur but for such combination; (d) Customer's continued use of the Purchased Software or other allegedly infringing activity after receiving notice of the alleged infringement; or (e) any version of the Purchased Software that is no longer supported by Splunk ((a) through (e), collectively, "**Excluded Matters**"). If an applicable Claim is made or appears likely to be made, Splunk may, at its option and expense, modify the affected Purchased Software so that it is noninfringing, or replace it with substantially functionally equivalent software. If Splunk determines that neither is reasonably feasible, Splunk may terminate Customer's applicable license and refund Customer a pro rata refund of the Fees previously paid by Customer, which will be calculated using the remainder of the license term (beginning with the date of Splunk's receipt of notice of the applicable Claim), or if the Purchased Software is licensed under a perpetual license, a refund of Fees previously paid by Customer, less straight-line depreciation on a three-year basis from the Delivery of the applicable Software. The obligations set forth in this Section constitute Customer's sole and exclusive remedy, and Splunk's entire liability, with respect to any Claims that the Purchased Software infringes any third party's Intellectual Property Rights. To the extent permitted by the laws of the State of Oregon, Customer will defend Splunk against any Claim brought against Splunk by a third party arising out of or relating to any Excluded Matter or any Customer Extension, and Customer will pay all damages finally awarded against Splunk by a court of competent jurisdiction as a result of such Claim. Each party's indemnity obligations set forth in this Section 13 are conditioned upon the party seeking indemnification (x) providing prompt written notice to the other party of the applicable Claim; (y) giving the indemnifying party sole control of the defense and/or settlement of the Claim, except that: (i) the indemnified party may participate in the defense with counsel of its choice at its own expense, and (ii) the indemnifying party will not agree to any settlement that imposes a material obligation on the indemnified party without the indemnified party's prior written consent (not to be unreasonably withheld or delayed), and (z) providing reasonable cooperation and assistance in the defense and negotiations.

#### **14. CONFIDENTIAL INFORMATION.**

**14.1 Confidential Information.** "**Confidential Information**" means any technical or business information, ideas, materials, know-how or other subject matter that is disclosed by one party to the other party that: (a) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (b) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after

any such disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information of Splunk will include the Splunk Materials (including any license keys).

**14.2 Use and Disclosure Restrictions.** The party receiving Confidential Information ("**Recipient**") agrees: (a) to maintain the Confidential Information of the party disclosing such information (the "**Discloser**") in strict confidence; (b) not to disclose such Confidential Information to any third parties; and (c) not to use any such Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement. Recipient will treat Confidential Information of the Discloser with the same degree of care as it accords to its own Confidential Information, but in no event with less than reasonable care. Recipient may disclose the Confidential Information of Discloser to its directors, officers, and employees (collectively, "**Representatives**"), who have a bona fide need to know such Confidential Information, provided that each such Representative is bound by a legal obligation as protective of the other party's Confidential Information as those set forth herein. Recipient's obligations under this Section 14 will continue in effect for a period of three (3) years from the date of last disclosure of Confidential Information by Discloser, except that Customer's obligations under this Section 14 will continue in effect in perpetuity with respect to Splunk Materials.

**14.3 Exclusions.** The obligations of Recipient under Section 14.1 will not apply to any Confidential Information that: (a) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Recipient (or any of its Representatives, affiliates, or agents) or any third party subject to any use or disclosure restrictions with respect to such Confidential Information; (b) was known by or lawfully in the possession of Recipient, prior to receiving such information from Discloser, without restriction as to use or disclosure; (c) is rightfully acquired by Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (d) is independently developed by Recipient without access, use or reference to any Confidential Information of Discloser.

**14.4 Required Disclosures.** The provisions of Section 14.1 will not restrict Recipient from disclosing Discloser's Confidential Information to the extent required by any law or regulation or compelled by a court or administrative agency of competent jurisdiction, provided that, to the extent permissible under law, Recipient uses reasonable efforts to give Discloser advance notice of such required disclosure in order to enable Discloser to prevent or limit disclosure.

**14.5 Return or Destruction of Confidential Information.** Upon termination of the Agreement or support and maintenance, Recipient will promptly return to Discloser or, at Discloser's option, destroy all tangible items and embodiments containing or consisting of Discloser's Confidential Information and all copies thereof and provide written certification of such destruction or return by an authorized person.

**14.6 Injunctive Relief.** Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information will cause irreparable harm and significant injury to Discloser, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 14, without the necessity of posting any bond or other security. Recipient will notify Discloser in writing immediately upon Recipient's becoming aware of any such breach or threatened breach.

**15. TERM.** This Agreement will commence upon Splunk's first delivery of the Software specified in the Order (or, Splunk's other initial delivery of the Software to Customer) and will remain in effect until the expiration of the applicable Software license term, unless earlier terminated pursuant to Section 16 (the "**Term**"). For the avoidance of doubt, termination of a license term shall not affect the term of any other licenses applicable to other Splunk products and services that Customer has purchased. Further, termination of a Content Subscription shall not affect the term of the base license applicable to the Software that Customer has purchased.

**15.1 Purchased Software, etc.** Unless otherwise indicated in the Order, the Term for Purchased Software, Free Software, Splunk Extensions and Splunk Developer Tools, if applicable, will continue indefinitely, unless and until terminated pursuant to Section 16. If the Order indicates a Term of a specific duration for any of the foregoing, then licenses granted to Customer for such Purchased Software or Free Software will terminate automatically upon expiration of such Term. Upon expiration of any Term, the applicable Software will stop working automatically.

**15.2 Evaluation Software.** If Customer is granted a license for Evaluation Software, then the Term for such Evaluation Software will be specified in the Order or with the license key. If no such term is specified, the Term for Evaluation Software is thirty (30) days from the date the license key is delivered. Any license keys provided for Evaluation Software will automatically expire and cause the Evaluation Software to become non-operational at the end of the Term. If Customer wishes to use the Evaluation Software after the Term expires, then Customer must obtain the applicable paid license.

- 16. TERMINATION.** Either party may terminate this Agreement by written notice to the other party if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days of receiving notice of the breach. In addition, Splunk may immediately terminate this Agreement (in whole or in part, including with respect to any Term) by written notice to Customer (a) if Customer materially breaches Section 3, and (b) as set forth in Section 6. Splunk may also terminate Customer's license to any Evaluation Software at any time with or without cause by notice to Customer. If Customer is the Government, then termination terms and conditions will be governed by 48 C.F.R. § 52.212-4. Upon any expiration or termination of this Agreement, the rights and licenses granted to Customer hereunder will automatically terminate, and Customer agrees to cease immediately using the Splunk Materials and to return or destroy all copies of the Splunk Materials and other Splunk Confidential Information in Customer's possession or control, and certify in writing the completion of such return or destruction in accordance with Section 14.4. Upon termination of this Agreement, Splunk will have no obligation to refund any Fees or other amounts received from Customer during the Term, and notwithstanding any early termination above, Customer shall still be required to pay all Fees payable under an Order (*i.e.*, no such early termination shall relieve Customer of its obligations to pay all Fees payable under an Order) unless otherwise provided in this Agreement. Termination of Support and Maintenance Terms and Conditions due to Splunk's breach is provided in Section 3.2 of Exhibit C, Section 0 (Definitions), Section 5 (Ownership), Section 8 (Software Verification and Audit), Section 11 (Warranty Disclaimer), Section 12 (Limitation of Liability), Section 13 (Indemnity), Section 14 (Confidentiality), Section 16 (Termination) and Sections 17 (Export) through 23 (General) will survive any expiration or termination of this Agreement.
- 17. EXPORT.** Customer will comply fully with all relevant export laws and regulations of the United States and any other country ("**Export Laws**") where Customer uses any of the Splunk Materials. Customer certifies that Customer is not on any of the relevant U.S. government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. Customer further certifies that Customer will not export, re-export, ship, transfer or otherwise use the Splunk Materials in any country subject to an embargo or other sanction by the United States, including Iran, Syria, Cuba, Sudan and North Korea and that Customer will not use the Splunk Materials for any purpose prohibited by the Export Laws, including, but not limited to, nuclear, chemical, missile or biological weapons related end uses.
- 18. GOVERNMENT END USER RIGHTS.** Customer acknowledges that all Splunk Materials were developed entirely at private expense and that no part of the Splunk Materials was first produced in the performance of a government contract. Customer agrees that all Splunk Materials and any derivatives thereof are "Commercial Items" as defined in 48 C.F.R. § 2.101, and if Customer is the Government, then such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the Splunk Materials are licensed to Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, Customer will have no rights in the Splunk Materials except as expressly agreed to in writing by Customer and Splunk.
- 19. PUBLICITY.** With prior written consent, Customer agrees that Splunk may publish a brief description describing Customer's deployment of the Software and identify Customer as a Splunk customer on any of Splunk's websites, client lists, press releases, and/or other marketing materials.
- 20. THIRD PARTY CONTENT DISCLAIMER.** Certain Extensions and other materials available for download on Splunkbase are developed and/or provided by third parties ("**Third-Party Content**"). Splunk makes such Third-Party Content available for download on Splunkbase as a convenience to its customers, but Splunk neither controls nor endorses, nor is Splunk responsible for, any Third-Party Content, including the accuracy, integrity, quality, legality, usefulness or safety of Third-Party Content. Certain Third-Party Content may, among other things, be inaccurate, nonfunctional, infringing or dangerous. Nothing in this Agreement or on Splunkbase will be deemed to be a representation or warranty by Splunk with respect to any Third-Party Content, even if a particular Extension or other item of Third-Party Content is identified as "certified" for use with Software. Splunk has no obligation to monitor Third-Party Content, and Splunk may block or disable access to any Third-Party Content at any time. In addition, the availability of any Third-Party Content through Splunkbase does not imply Splunk's endorsement of, or affiliation with, any provider of such Third-Party Content, nor does such availability create any legal relationship between Customer and any such provider. Customer's use of Third-Party Content is at Customer's own risk and may be subject to any additional terms, conditions and policies applicable to such Third-Party Content (such as license terms, terms of service or privacy policies of the providers of such Third-Party Content).
- 21. AUTHORIZED PARTNERS.** If Customer acquired the Software through an authorized reseller, partner or OEM of Splunk ("**Authorized Partner**") then, notwithstanding anything to the contrary in this Agreement: (a) Customer's use of the Software is subject to any additional terms in the agreement provided by the Authorized Partner; (b) Customer agrees to pay the Authorized

Partner the Fees and other applicable fees, and Customer will have no direct Fee payment obligations to Splunk for such Software; (c) Customer's agreement with the Authorized Partner is between Customer and the Authorized Partner and is not binding on Splunk; and (d) Splunk may terminate this Agreement (including Customer's right to use the Software) if Splunk does not receive payment for Customer's use of the Software from the Authorized Partner or if Customer breaches any term of this Agreement. If Customer's warranty and support terms stated in its agreement with the Authorized Partner are different from those set forth in this Agreement, then such different terms are solely between Customer and the Authorized Partner and Splunk will have no obligations to Customer under this Agreement with respect to such different terms. Except as set forth in the preceding sentence, if there is any conflict or inconsistency between this Agreement and Customer's agreement with Authorized Partner, then this Agreement will control (and will resolve such inconsistency) as between Splunk and Customer.

**22. CHOICE OF LAW AND DISPUTES.** Unless Customer is the Government, this Agreement will be governed by and construed in accordance with the laws of the State of California, as if performed wholly within the state and without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in San Francisco, California, and the parties hereby consent to personal jurisdiction and venue therein (except that Splunk may seek injunctive relief to prevent improper or unauthorized use or disclosure of any Splunk Materials in any court of competent jurisdiction). If Customer is the Government, this Agreement will be governed by and interpreted in accordance with the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 7101-7109). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this Agreement will be a dispute to be resolved in accordance with the clause at 48 C.F.R § 52.233-1, which is incorporated in this Agreement by reference.

**23. GENERAL.**

**23.1 Purchase Order.** Customer's issuance of a purchase order constitutes acceptance of this Agreement notwithstanding anything to the contrary in such purchase order. If any purchase order contains any terms or conditions that are different from or additional to the terms and conditions set forth in this Agreement, then Splunk expressly rejects such different or additional terms and conditions, and such different or additional terms and conditions will not become a part of the agreement between the parties notwithstanding any subsequent acknowledgement, invoice or license key that Splunk may issue.

**23.2 Notices.** All notices required or permitted under this Agreement will be in writing and delivered in person, by confirmed facsimile transmission, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth in the applicable Order or to such other address as may be specified by either party to the other party in accordance with this Section.

**23.3 Assignment.** Customer may not assign, delegate or transfer this Agreement, in whole or in part, by agreement, operation of law or otherwise. Splunk may assign this Agreement in whole or in part to an Affiliate or in connection with an internal reorganization or a merger, acquisition, or sale of all or substantially all of Splunk's assets to which this Agreement relates. Splunk may also assign its rights to receive payment due as a result of performance of this Agreement to a bank, trust company, or other financing institution, including any federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. § 3727) and may assign this Agreement in accordance with the provisions at 48 C.F.R § 42.12, as applicable. Any attempt to assign this Agreement other than as permitted herein will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

**23.4 Rights and Remedies.** Except as otherwise expressly set forth in this Agreement, the rights and remedies of either party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity.

**23.5 Waiver; Severability.** The waiver by either party of a breach of or a default under this Agreement will not be effective unless in writing. The failure by either party to enforce any provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

**23.6 Interpretation.** For purposes of interpreting this Agreement, (a) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (b) unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph; (c) the words "include" and "including" will not be construed as terms of limitation, and will therefore mean "including but not limited

to" and "including without limitation"; (d) unless otherwise specifically stated, the words "writing" or "written" mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; (e) the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement; and (f) the references herein to the parties will refer to their permitted successors and assigns.

**23.7 Data Collection; Privacy.** From time to time, Splunk may collect and process technical and related information about Customer's use of the Software, which may include Internet protocol addresses, hardware identification, operating system, application software and other usage information, and use this information to support and troubleshoot issues, provide updates, invoice and improve Splunk's products or services. Such information will be subject to the Splunk Privacy Policy, which policy is hereby incorporated by reference and made a part of this Agreement.

**23.8 Integration.** This Agreement along with any additional terms incorporated herein by reference, including the Order and the Exhibits hereto, constitute the complete and exclusive understanding and agreement between the parties and supersedes any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties. Any terms and conditions contained or referenced by either party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement will be disregarded and have no effect unless otherwise expressly agreed to by the parties in accordance with the preceding sentence.

**EXHIBIT A  
DEFINITIONS**

1. "**Affiliate**," with respect to a party, means a corporation, partnership or other entity controlling, controlled by or under common control with such party, but only so long as such control continues to exist. For purposes of this definition, "control" means ownership, directly or indirectly, of greater than fifty percent (50%) of the voting rights in such entity (or, in the case of a noncorporate entity, equivalent rights).
2. "**Authorized Partner**" has the meaning set forth in Section 21.
3. "**Claim**" has the meaning set forth in Section 13.
4. "**Confidential Information**" has the meaning set forth in Section 14.1.
5. "**Content Subscription**" means certain entitlement for Customer to receive a collection of updated contents applicable to the Purchased Software (such as models, rules and configurations, as further described in the relevant end user documentation for the Purchased Software) on a periodic basis for the duration of the subscription period. This can be purchased as an add-on service to the term license or perpetual license to the applicable Purchased Software.
6. "**Content Subscription Fees**" has the meaning set forth in Section 6.
7. "**Customer Extensions**" has the meaning set forth in Section 2.7.
8. "**Delivery**" means the date of Splunk's initial delivery of the license key for the applicable Software or otherwise making the applicable Software available for download by Customer.
9. "**Disabled Materials**" means certain materials (including programs, modules or components, functionality, features, documentation, content or other materials) that may be contained in or provided with the Software as part of the delivery mechanism used by Splunk, but that are disabled or hidden in Customer's setting, because Customer either: (a) does not have the relevant license or license key, or (b) has not paid the applicable Fees, for those materials.
10. "**Enhancements**" means any updates, upgrades, releases, fixes, enhancements or modifications to the Purchased Software made generally commercially available by Splunk to its support customers under the terms and conditions set forth in Exhibit C.
11. "**Evaluation Software**" means Software that is specified in an Order as provided under an evaluation license or a free trial license.
12. "**Excluded Matters**" has the meaning set forth in Section 13.
13. "**Extension**" means any separately downloadable suite, configuration file, add-on, technical add-on, example module, command, function or application, that extends the features or functionality of the applicable Software.
14. "**Feedback**" means all suggestions for improvement or enhancement, recommendations, comments, opinions, code, input, ideas, reports, information, know-how or other feedback provided by Customer (whether in oral, electronic or written form) to Splunk in connection with Splunk's Software. Feedback does not include any data, results or output created or generated by Customer using the Software, unless specifically submitted or communicated by Customer to Splunk as part of the Feedback.
15. "**Free Software**" means Software that is specified in an Order as provided to Customer without charge (other than Evaluation Software).
16. "**Government**" means an agency, department, or instrumentality of the United States government.
17. "**Intellectual Property Rights**" means all patent, copyright, trademark, and trade secret rights and other intellectual property and proprietary rights, whether registered or unregistered.
18. "**Internal Business Purpose**" means Customer's use for its own internal business operations on Customer's systems, networks and devices with Customer's data. Such use does not include use by Customer on a service bureau basis or otherwise to provide services to, or process data for, any third party.
19. "**Licensed Capacity**" means the maximum usage of the Software (e.g., aggregate daily volume of data indexed, number of Nodes, number of users, etc.) that is permitted under the type of license included in the applicable Order. The available types of license and the associated Licensed Capacity for each are set forth in Exhibit B.

20. "**License Fees**" has the meaning set forth in Section 6.
21. "**Open Source Software**" means software or similar subject matter that is distributed under an open source license such as (by way of example only) the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, any derivative of any of the foregoing licenses, or any other license approved as an open source license by the Open Source Initiative.
22. "**Order**" means Splunk's quote or ordering document accepted by Customer or Customer's purchase order or other ordering document submitted to Splunk (directly or indirectly through an Authorized Partner) to order Splunk Materials or services, which references the products, services, pricing and other applicable terms set forth in an applicable Splunk quote or ordering document.
23. "**Professional Services**" has the meaning set forth in Section 8.
24. "**Purchased Software**" means Software that is licensed to Customer and for which Customer has paid a License Fee to Splunk, whether directly or through an Authorized Partner.
25. "**Service Providers**" has the meaning set forth in Section 4.
26. "**Splunkbase**" means Splunk's online directory of or platform for Extensions, currently located at <https://splunkbase.splunk.com/> and any and all successors, replacements, new versions, derivatives, updates and upgrades thereto.
27. "**Splunk Developer Tool**" means the standard application programming interface or configuration and related materials identified and provided by Splunk for and with the applicable Software to enable the creation of Extensions or otherwise support interoperability between the Software and Customer's system or environment.
28. "**Splunk Extensions**" means Extensions made available through Splunkbase that are identified on Splunkbase as published by Splunk (and not by any third party).
29. "**Splunk Materials**" mean the Software, Software license keys, Splunk Developer Tools, Splunk Extensions and end user documentation relating to the foregoing.
30. "**Software**" means the Software products listed in an Order and any Enhancements thereto made available to Customer by Splunk.
31. "**Support Fees**" has the meaning set forth in Exhibit C.
32. "**Support Services**" has the meaning set forth in Section 7.
33. "**Term**" has the meaning set forth in Section 15.
34. "**Test and Development Software**" means Software that is specified in an Order as provided under a test and development license.
35. "**Third-Party Content**" has the meaning set forth in Section 20.

**EXHIBIT B**

**LICENSED CAPACITY**

The Licensed Capacity and other license limitations associated with each Purchased Software can be found here:  
[https://www.splunk.com/en\\_us/legal/licensed-capacity.html](https://www.splunk.com/en_us/legal/licensed-capacity.html)

**EXHIBIT C**

**SPLUNK INC.**

**SUPPORT AND MAINTENANCE TERMS AND CONDITIONS**

Customer agrees that the following terms and conditions ("**Terms and Conditions**") will govern the delivery of any support and/or maintenance services by Splunk ("**Support**") listed on an Order entered into pursuant to the Software License Agreement (the "**Agreement**") to which these Terms and Conditions are attached and made a part thereof. Subject to Customer's termination rights set forth in the Agreement, ordering any Support from Splunk or any authorized reseller indicates Customer's acceptance of these Terms and Conditions. These Terms and Conditions are effective upon receipt and confirmation of acceptance of Customer's purchase order by Splunk or an authorized reseller (the "**Effective Date**").

1. **DEFINITIONS.** Unless otherwise defined in these Terms and Conditions, capitalized terms has the meanings set forth in the Agreement.
2. **SUPPORT AND MAINTENANCE.**
  - 2.1 **Services.** Subject to Customer's timely payment of the applicable annual Support fees set forth in the Order (the "**Support Fees**"), Splunk will provide the level of Support identified in the Order in accordance with the Support descriptions set forth below. No other maintenance or support for the Software is included.
  - 2.2 **Support Fees.** Support Fees will be due and payable in accordance with the Order. Splunk will notify (electronically or otherwise) Customer of the then-current annual Support Fee for Customer's level of Support in each notice of term renewal. Support Fees are non-refundable once paid.
  - 2.3 **Exclusions.** Splunk will have no obligation of any kind to provide Support for issues caused by or arising out of any of the following (each, a "**Licensee-Generated Error**"): (i) modifications to the Software not made by Splunk; (ii) use of the Software other than as authorized in the Agreement or as provided in the documentation for the Software; (iii) damage to the machine on which the Software is installed; (iv) Customer's continued failure to use the Software without reference to the documentation; (v) versions of the Software other than the most recent version or the Supported Prior Version (defined in Section 2.6.8); (vi) third-party products not expressly supported by Splunk and described in the documentation; or (vii) conflicts related to replacing or installing hardware, drivers, and software that are not expressly supported by Splunk and described in the documentation. If Splunk determines that support for an issue caused by a Licensee-Generated Error, Splunk will notify Customer as soon as reasonably possible under the circumstances. If Customer agrees that Splunk should provide support for the Licensee-Generated Error via a confirming email, then Splunk will have the right to invoice Customer at Splunk's then-current time and materials rates for any such support provided by Splunk.
  - 2.4 **Support for Splunk Extensions.** Subject to Customer's payment of the applicable annual Support fees, if Customer are a licensee of a Splunk Extension supported by Splunk, Splunk will provide an Initial Response and Acknowledgement in accordance with P3 terms as described in Section 2.6.3 below. Updates for the Software will be provided when made available. No other sections in these Terms and Conditions apply to Splunk Extensions.
  - 2.5 **Restrictions.** Support is delivered only in English unless Customer is in a location where Splunk has made localized Support available.
  - 2.6 **Support Descriptions.**
    - 2.6.1 **Splunk Support.** Customer's Order will identify one of three levels of Support: Standard, Enterprise or Global. Every level of Splunk Support provides telephone support, online documentation, web forums, email and a web-based portal for submitting cases and tracking case status. Support cases are handled based on case priority levels as described in Section 2.6.2. When submitting a case, Customer will select the priority for initial response by logging the case online, in accordance with the priority guidelines set forth in Section 2.6.2. When the case is received, Splunk Support may change the priority if the issue does not conform to the criteria for the selected priority and will provide Customer with notice (electronic or otherwise) of such change. Splunk Standard Support means in the first forty-five (45) days from delivery of the Purchased Software, Splunk will provide an Initial Response and Acknowledgement for P3 issues only and will provide Software updates, when available. Splunk will provide to Customers of Test and Development Software P4 support through a web-based portal only. For Splunk Enterprise or Splunk Global Supports, Splunk will respond to support requests and will provide workarounds or fixes in accordance with the guidelines set forth in Section 2.6.3. Splunk Global Support also provides a primary contact to set up meetings, as frequently as weekly, to monitor Customer's support issues; to provide additional status reports and metrics; and to coordinate and execute a quarterly account status review at a mutually agreeable time. For a summary of the different support programs, please visit [http://www.splunk.com/en\\_us/support-and-services/support-programs.html](http://www.splunk.com/en_us/support-and-services/support-programs.html).

**2.6.2** Case Priority Levels. Case priorities are assigned based on the technical importance of the problem on Customer's Splunk environment.

P1 = Purchased Software is completely inaccessible or the majority of its functionality is unusable.

P2 = One or more key features of Purchased Software are unusable.

P3 = Any other case where a Purchased Software feature is not operating as documented.

P4 = General questions and requests for enhancements to the Purchased Software.

**2.6.3** Target Fix, Workaround, Escalation and Response Times.

**Initial Response & Acknowledgment,  
by case priority**

P1: 4 hours

P2: Next business day

P3: Two business days

P4: Two business days

**Targeted Fix Date or Workaround,  
by case priority**

P1: 1 day

P2: 1 week

P3: Next release

P4: At Splunk's discretion

**Escalation,  
by case priority**

P1: Manager: Immediate / VP: 1 business day

P2: Manager: 1 business day / VP: 1 week

P3: VP Product Management reviews all open bugs quarterly

P4: VP Product Management reviews all enhancement requests quarterly

**Email Status Updates for Open Cases,  
by case priority**

P1: Daily

P2: Weekly

P3: None

P4: None

**2.6.4** Authorized Support Contacts. Support will be provided solely to the authorized individual(s) specified by Customer that Splunk will communicate with that individual(s) when providing Support ("**Support Contacts**"). Splunk strongly recommends that Customer's Support Contact(s) be trained on the Purchased Software. Customer's Order will indicate a maximum number of authorized Support Contacts for Customer's license level. Customer will be asked to designate Customer's authorized support contacts, including their primary email address and Splunk.com login ID, following Splunk's acknowledgment of Customer's Order.

**2.6.5** Defect Resolution. Should Splunk in its sole judgment determine that there is a defect in the Purchased Software, it will, at its sole option, repair that defect in the version of the Software that Customer is currently using or instruct Customer to install a newer version of the Software with that defect repaired. Splunk reserves the right to provide Customer with a workaround in lieu of fixing a defect should it in its sole judgment determine that it is more effective to do so.

**2.6.6** Support Hours. Support is provided via telephone, email and web portal. Support will be delivered by a member of Splunk's technical support team during the regional hours of operation listed below.

**Enterprise Support**

P1: 24 x 7

P2: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding Splunk holidays

P3: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding

**Global Support**

P1: 24 x 7

P2: 24 hours per day during the five business days (Monday through Friday), excluding Splunk holidays

P3: 24 hours per day during the five business days (Monday through Friday), excluding Splunk holidays

Splunk holidays

P4: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding Splunk holidays

P4: Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 5 pm); excluding Splunk holidays

**2.6.7** Customer's Obligation to Assist. Should Customer report a purported defect in the Purchased Software to Splunk, Splunk may require Customer to provide them with the following information: (a) a general description of the operating environment, (b) a list of all hardware components, operating systems and networks, (c) a reproducible test case, and (d) any log files, trace and systems files. Customer's failure to provide this information may prevent Splunk from identifying and fixing that purported defect.

**2.6.8** Software Upgrades and Software End of Life Policy. When available, Splunk provides updates, upgrades, maintenance releases and reset keys only to Splunk Support customers. Software comes with a three digit number version. The first digit represents the major release (i.e. upgrade), the second digit identifies the minor releases (i.e., updates) and the third digit identifies the maintenance releases. With a new major version, the number to the left of the decimal is changed and for minor releases, the number to the right of the decimal point is increased. Subject to the foregoing, Splunk provides full Support, including, when available, bug fixes, only on the current major release and (a) the immediately prior major release or (b) twenty-four months from the then current major release, whichever period is longer ("**Supported Prior Versions**"). Notwithstanding the foregoing, Splunk will provide support for the first annual term for UBA in accordance with the following terms: Support will be provided only for use of the most current version of UBA plus the prior two releases, whether a minor or major release, or one year from delivery of UBA, whichever period is longer.

**2.7** **Changes in Support and Software**. Subject to Section 2.6.8, Customer acknowledges that Splunk has the right to discontinue the manufacture and development of any Software and the Support for any Software, including the distribution of older Software versions, at any time in its sole discretion, provided that Splunk agrees not to discontinue Support for the Software during the current annual term of these Terms and Conditions, subject to the termination provisions herein. Splunk reserves the right to alter Support from time to time, using reasonable discretion but in no event will such alterations result in (i) diminished support from the level of Support set forth herein; (ii) materially diminished obligations for Splunk; (iii) materially diminished Customer's rights; or (iv) higher Support Fees during the then-current term. Splunk will provide Customer with thirty (30) days' prior written notice (delivered electronically or otherwise) of any permitted material changes to the Support contemplated herein.

**3. TERM AND TERMINATION.**

**3.1 Term**. These Terms and Conditions will commence on the Delivery date and, unless terminated earlier in accordance with the terms of the Agreement, for a period of one (1) year (or for term purchased if different than one year) thereafter (the "**Initial Term**"). The agreement will automatically renew for additional one (1)-year terms (or for term purchased if different than one year) (each, a "**Renewal Term**," and the Initial Term, collectively with any and all Renewal Terms, will be referred to as the "**Support Term**"), unless either party provides the other (or if purchased through a reseller, Customer provides reseller) with written notice of its intent not to renew the agreement at least thirty (30) days prior to the end of the then current Initial Term or Renewal Term. Customer must purchase and/or renew Support for all of the licenses for a particular Software product. If the Support Term lapses, Customer may seek to re-activate Support by submitting a purchase order that includes fees for the lapsed period plus a reinstatement fee.

**3.2 Termination**. Either party may terminate this Agreement by written notice to the other party if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days of receiving notice of the breach. If Customer terminates the agreement for Splunk's uncured material breach of the support and maintenance terms set forth here in Exhibit 3, then Splunk will refund any unused prepaid fees to Customer as Customer's sole and exclusive remedy.

**4. FORCE MAJEURE**. Splunk will not be responsible for any failure or delay in its performance under these Terms and Conditions due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.